IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 114 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT MEVADAS DUNANI

Versus

MANOJ BHAGWANDAS MAKHIJANI

Appearance:

1. Criminal Revision Application No. 114 of 2001

MR MITUL K SHELAT for Petitioner No. 1

MR YN RAVANI for Respondent No. 1

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner before this Court is the accused in Criminal Case No.4655/99 pending before the learned Judicial Magistrate, First Class, Nadiad. It appears that pursuant to the complaint lodged by the opponent no.1 against the petitioner for offence punishable under Section 138 of the Negotiable Instruments Act, process was ordered to be issued upon the petitioner. Feeling aggrieved, the petitioner filed an application under Section 482 of the Code of Criminal Procedure and prayed for quashing the complaint and for discharge and also for initiating prosecution against the complainant for offence punishable under Sections 193, 195, 196, 197 and 200 of the Indian Penal Code. The said application has been rejected by the learned Magistrate on 8th December, 2000. The learned Magistrate was of the view that the offence being summons triable, the Magistrate had no power to discharge the accused or to quash the proceedings under Section 482 of the Code of Criminal Procedure. Feeling aggrieved, the accused has preferred the present petition.

#. Mr.Mitul Shelat appearing for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the matter of KM MATHEW v. STATE OF KERALA & ANR. [AIR 1992 S.C. 2206]. He has submitted that there need not be a specific provision for quashing the process against an accused. The Magistrate has the power to quash the process which he had issued, if the accused successfully demonstrates that no offence has been made out against him. In the matter of KM MATHEW (Supra), the Hon'ble Supreme Court has held thus, "it is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused."

#. Mr.YN Ravani has appeared for the complainant - opponent no.1 and has contested the application. He has submitted that in any view of the matter the complaint makes out an offence against the accused and the accused can not be discharged at this stage.

#. It is indisputable that the learned Magistrate has rejected the application for discharge only on the ground that the learned Magistrate had no jurisdiction to do so. In view of the judgment of the Hon'ble Supreme Court referred to hereinabove, more particularly the observations made as reproduced hereinabove, the learned Magistrate ought to have considered the application for discharge made by the accused on merits after considering the matters on records.

#. In the circumstances, the Revision Application is partly allowed. The judgment and order of the learned Judicial Magistrate, First Class, Nadiad dated 8th December, 2000 with respect to the application for discharge made by the accused - petitioner in Criminal Case No.4655/99 is quashed and set aside. The matter is remanded to the learned Magistrate for hearing afresh and decision on merits. Rule is made absolute to the above extent. Ad interim order stands vacated.

4th December, 2001. (Ms. R.M.Doshit, J.)

/sakkaf